

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13948, of the Simpson-Hamline United Methodist Church, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.41 to use the first floor of the subject premises as a child development center comprising forty children and three teachers in an R-1-B District at the premises 4501 16th Street, N.W., (Square 2702, Lot 805).

HEARING DATE: April 20, 1983

DECISION DATE: May 4, 1983

FINDINGS OF FACT:

1. The subject property is located on the northeast corner of the intersection of 16th and Allison Streets, N.W. It is known as premises 4501 16th Street, N.W. and is in an R-1-B District.

2. The subject property is improved with a large, stone structure fronting on 16th Street used as the Simpson-Hamline United Methodist Church. Attached to the subject Church is a two-story wing on the south side. This attached wing is entered from Allison Street.

3. The subject premises is located within an R-1-B District, the eastern end of which is the center of a public alley adjacent to the applicant's property to the east. North of the subject site are two residences. The site is bounded on the west by 16th Street and on the south by Allison Street. East of the property is a fifteen foot public alley. East of the alley the area is zoned R-4 and is characterized by row dwellings. The R-4 zoning designation encompasses a large portion of the surrounding area east of 16th Street with the exception of several small pockets zoned C-1 bordering 14th Street, N.W. There is also a relatively small C-M-1 District along 14th Street which includes a Metro bus garage. West of 16th Street, N.W., the area is predominantly zoned R-1-B and characterized by large, single-family, detached dwellings. There is also a small R-3 District in this area consisting of row and semi-detached dwelling units.

4. There is a large concentration of churches on 16th Street within two blocks of the subject site. Churches are located on the northwest corner of 16th and Varum Streets, on the southwest corner of 16th and Webster, on the

northeast corner of 16th and Webster, on the southeast corner of 16th and Allison, at 16th and Crittenden Streets, and at the northwest and northeast corners of 16th and Decatur Streets. Embassies occupy the two structures on the west side of 16th Street between Allison Street and Buchanan Street.

5. The applicant proposes to operate a child development center. It will be located on the first floor of the two-story wing. It will be staffed by three teachers, two assistant teachers and three teacher aides. The facility will operate between the hours of 7:00 A.M. and 6:00 P.M.

6. The BZA, by its Order No. 9243, dated June 14, 1967, conditionally approved an application of the Child Day Care Association to provide its services at the subject site. The applicant asserted that the Uptown Montessori School thereafter operated a child development facility at the subject site for approximately ten years. No certificate of occupancy could be located for either of these two uses.

7. Pursuant to the requirements of Paragraph 3104.41, a child development center is permitted in a residential district as a special exception if approved by the Board. The Paragraph requires that the Board determine that:

- a. The center shall be capable of meeting all applicable code and licensing requirements.
- b. The center shall be so located and designed as to create no objectionable traffic condition and no unsafe condition for picking-up and dropping-off children.
- c. The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors.
- d. The center, including any outdoor play space provided, is so located and designed that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual or other objectionable conditions. The Board may require such special treatment in the way of design, screening of buildings, planting and parking areas, signs or other requirements as it shall deem necessary to protect adjacent and nearby properties.
- e. Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between such play area and the center itself.

- f. The Board may approve more than one child development center in a square or within 1,000 feet of another child development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise operations or other similar factors.
- g. Before taking final action on an application for such use, the Board shall submit the application to the D.C. Department of Human Services, D.C. Department of Transportation for review and written reports. The referral to the D.C. Department of Human Services shall request advice as to whether the proposed center can meet all licensing requirements set forth in the applicable laws of the District of Columbia.

8. Without a certificate of occupancy, the applicant has operated a child development center with eleven children, aged two through four, and one staff person. The center has been in operation since October, 1982. The applicant contended that its educational facility is a completely church-related entity. The subject application was filed to acquire a certificate of occupancy. The applicant asserted that informal approval of its facility was received from the Fire Department and the Department of Human Services. No further formal action by those agencies has been taken pending the Board's action on the subject application.

9. The center will not provide bus service for the children. The Allison Street entrance of the south wing will be used for the staggered arrival and departure of children. The applicant asserted that at present nine of the eleven enrollees live within a ten block radius of the center. Six children are driven to the center, three are walked, and two use public transportation.

10. The subject property is at the intersection of a relatively busy thoroughfare, Allison Street, and a major arterial, 16th Street. There is a bus stop immediately north of the facility at 16th and Buchanan Streets.

11. A child development center in an R-1-B District is required to have one parking space for each four teachers and other employees. The applicant proposes a staff of eight. Two on-site parking spaces are required. The applicant contended that sufficient spaces are available in the parking area at the rear of the subject premises. That area does not presently comply with the requirements set forth in the Sub-section 7206.1 of the Zoning Regulations. This area extends fifty-eight feet from the alley and is presently used for parking. The land is uneven. There is a

six-inch slope above the alley level toward the north lot line and toward the 16th Street fence. The surface is of mixed grass, clay and gravel. The proposed parking area; located at the rear of the premises and accessible from the public alley, is not landscaped. Several plantings along the northern lot line are irregular and do not exceed five feet in height.

12. Parking or standing is prohibited on both sides of 16th Street during rush hours. Allison Street is thirty feet wide. Two hour parking is permitted, but not within twenty-five of the intersection. The fifteen foot alley east of the subject premises extends from Allison to Buchanan Streets, approximately 150 feet from the intersection. the applicant contended that it has lessened the neighborhood parking problems by scheduling two weekly services rather than one large service. Occasionally, the applicant leases its premises to congregations needing temporary quarters for religious services or social activities. Further, the applicant proposes to use the Carter Barron fringe parking area for overflow parking needs. The Carter Barron location is approximately five blocks from the subject site.

13. The proposed play area is adjacent to the Allison Street entrance and is approximately 400 square feet in size. It contains swings, benches, a sandbox, a slide and similar children's play things. The play area is fenced with a three and one-half foot high chain link fence. An additional fence separates the fenced play area from the alley. There is no landscaping between the play area and the residential structure on the east side. The applicant proposed that the children would play in small groups at various times. The applicant further proposed that the Taylor Playground at 14th Street and Arkansas Avenue could be used for recreation. The Taylor Playground is four blocks east of the subject site. The children would walk to the playground, escorted by the center's staff.

14. There is one other child development center within 1000 feet of the subject site. It is located on the southwest corner of Crittenden and 16th Streets, N. W. That center is operated by and within the 19th Street Baptist Church. It is on the opposite side of 16th Street from the proposed center, two blocks north on 16th Street.

15. There were five letters of record in support of the subject application. The letters were submitted on the grounds that higher quality instruction and supervision of children were provided by the center.

16. Several interested citizens testified in support of the application. Surveys of the traffic volumes and the traffic patterns in the subject area were conducted prior to

the Public Hearing. The surveys were alleged to establish that during the peak morning and evening hours, the arrival and departure of vehicles along Allison Street did not exacerbate the neighborhood conditions. Approximately fifty percent of the eleven children now enrolled use private transportation. The supporters contended that the center could efficiently accommodate up to twenty-six children and five staff. It was argued that the use of a nearby off-site play area and staggered recreation times would lessen the impacts of children in the neighborhood. Additional landscaping of the site and a conditional approval of the application for two years were strongly recommended.

17. The Office of Planning, by report dated April 13, 1983, recommended denial of the subject application as advertised for forty children and a staff of eight. The OP staff learned through discussion with the Department of Human Services's representatives that the proposed child development center meets all of the DHS licensing requirements. The DHS indicated, however, that under its regulations, twenty-six students is the maximum permitted number. The Office of Planning reported that overflow parking may become a problem. Most of the surrounding streets east of 16th Street and within 500 feet of the subject premises are included in the residential parking permit program which restricts parking for non-residents to two hours. Those streets in the area not included in the residential parking permit program are mostly located west of Sixteenth Street, and despite their proximity within 500 feet of the subject premises, the Department of Transportation staff advised the Office of Planning that the spaces are too far removed to be convenient.

18. In the foregoing circumstances, the Office of Planning believed that two parking spaces would be inadequate for a center of the size. The Office of Planning further reported two concerns relative to the play area. First, its location, and lack of landscaping may create noise and visual problems for the residents of the first row dwelling east of the alley and to a lesser extent, the residents of the row structures across Allison on the south side of the street. Second, the Office of Planning was concerned that the proposed outdoor play area would be too small to accommodate forty students. An acceptable solution would be to stagger play time for the students.

19. The Office of Planning further reported that because the nearest similar facility is about three blocks away, on the opposite side of 16th Street, no adverse cumulative impacts could be foreseen if the Board was to approve the subject application.

20. The Office of Planning believed that a child development center of the magnitude proposed would impose

objectionable impacts in terms of noise and parking upon abutting property owners and the surrounding residential neighborhood. The Office of Planning might have supported an application for twenty-six children which is the number upon which DHS's statement of licensing capability is based. The applicant must demonstrate its intent to comply with the Zoning Regulations with regard to the condition and maintenance of the Church parking lot. The unsightly appearance of the parking area and the rear of the Church in general, have raised complaints from abutting property owners. The Office of Planning recommended that the applicant submit a schematic plan to the Board indicating the layout of the parking spaces on impervious surface and a fencing or screening treatment to improve the appearance of the parking area. Further, if the size of the child development center is scaled back, information as to the corresponding decline in staff will be necessary to assess the "sufficient" on-site parking requirement for the center.

21. The Board concurs with the recommendation of the Office of Planning and its reasoning in regard to parking, traffic, noise and visual impacts of the proposed facility upon the surrounding residential neighborhood.

22. The applicant contended that written notice affirming DHS approval had been obtained. The applicant was unable to locate such notice.

23. The Department of Transportation, by memorandum dated April 13, 1983, reported that the expected level of traffic generated by the proposed facility would not measurably affect levels of service on the street system. The DOT determined that the proposed child development center could be accommodated within the street system.

24. Advisory Neighborhood Commission 4C, by letter dated April 19, 1983, reported that the Commission recommended denial of the subject application. The Commission reported four major concerns:

- a. Increase in traffic and traffic hazards: The ANC expressed concerns about the adverse traffic conditions at the intersection of 16th Street and Allison Street, particularly during the morning and afternoon rush hours. Drivers now double park on Allison Street when dropping off or picking up children. This double parking interferes with traffic attempting to enter or cross-over 16th Street.
- b. Absence of Defined and Appropriate Parking Spaces: Sub-Paragraph 3101.41(c) requires the Board to determine that "The center shall provide sufficient off-street parking spaces to meet the

reasonable needs of the teachers, other employees and visitors." The ANC noted that the Center would have one director, three teachers and six aides, a total of ten persons. Sub-section 7202.1 of the Zoning Regulations requires "Two parking spaces for each three teachers and other employees except custodial personnel." Under the Regulations six to eight spaces would be required. The ANC argued that requirements for parking spaces have not been met by the applicant, in that any parking area available on the site does not meet the specifications of the Regulations.

- c. **Inadequate Outdoor Play Space:** The third concern of the Commission was paragraph 3101.41(d), pertaining to the outdoor play space. The current play space is located on the south side of the church building and is fenced in by a three foot fence. It extends thirty-five feet east to west and forty feet north to south. However, it extends north to south six feet into public space which is a violation of the Police Regulations. Article 4 - Occupation of Public Space. The current space totaling 1400 square feet provides area for only twenty-three children, according to Section 405 b-(1)- Outdoor space of the Rules and Regulations for Child Development Facilities, Regulation #74-34. During the period when there was a previous child care center in the church, the side yard was also used as a play area. The adjacent property owners expressed concern that this would occur again if an exception were granted because of the limited play area on the south side of the church. The side yard is less than seven yards from the bedroom window of the adjacent property owner. Thus, the play area as now defined appeared to be inadequate for the forty children proposed by the applicant.
- d. **Existing Child Development Center Within 1000 Feet of Subject Site:** The fourth concern of the Commission was Paragraph 3101.41(f), pertaining to the location of another child development center within 1000 feet of the applicant. The Commission had been advised by the Office of Licensure and Certification of the Department of Human Services, that a child development center is located at the 19th Street Baptist Church, 4602 16th Street, N.W. The center has an occupancy permit No. B93032 issued on October 1, 1982, and a Child Development Permit No. 903-975-CDC issued on October 31, 1982. The Chairperson of the ANC Housing and Community Development Committee was told by a staff member

that an increase in enrollment at this center was anticipated in September, 1983.

25. Several residents of the area testified at the public hearing that the traffic and recreational activities of the school were disturbing to the immediate community. The residents have observed that drivers double park along Allison Street and the public alley when dropping off and picking up the children at the center. Photographs were submitted to the record showing the proximity of the subject property to single family dwellings, the limited spaces for on-street parking, the bus traffic patterns on 16th Street, and the existence in the immediate neighborhood of another church which competes with the applicant's facility for on-street parking. One resident testified that there are approximately eleven churches within a seven block radius from the subject premises. That resident contended that many of the eleven churches have child development centers. Some of those centers appear to be operating without benefit of a certificate of occupancy. There was an exhibit of record which included listings of the area's child development centers. Other residents testified at the public hearing that objectionable traffic conditions would arise if the application was approved because with the installation of the left-turn-only lane on 16th Street near the site, traffic has become more congested and several accidents have occurred over the past months. The residents further contended that the public alley is quite narrow and was designed to accommodate access to the neighborhood family dwellings. The on-street parking is limited and the proposed site parking area is not sufficient to provide the required parking spaces. There was a petition of record from several immediate neighbors in the vicinity who were in opposition were listed.

26. Testimony was heard concerning difficulties arising because of the double parking when students arrive at and depart from the center. Neighbors contended that excessive blockage of traffic, increased pollution, objectionable vehicular noise and loss of easy access to public transportation available along 16th Street is directly attributable to the subject facility. Further, several residents testified that the seven-day per week on-going calendared activities of the applicant's Church and its affiliated organizations continuously add to traffic and parking problems of the neighborhood.

27. Several residents contended that the collection of \$180 per month per child constituted practice of a commercial enterprise. The residents objected to a business being conducted in a predominantly residential neighborhood.

28. The only abutting neighbor of the applicant appeared at the public hearing in opposition to the

application. She cited past instances wherein some enrollees of the center urinated on her property, threw stones at her pet and trespassed when going to and coming from the subject facility.

29. The Rock Creek East Neighborhood League, Inc., submitted a letter of record, dated April 14, 1983, which reported that the Executive Committee had reviewed the subject application. After consideration of the objections, which were not expressed therein, to the proposed center by some residents living within 200 feet of the subject premises, the consensus of the League was that the application not be granted.

30. Several citizens opposed to the subject application testified that the on site parking is comparable to a side yard. Those opponents contended that the applicant's proposal to use the off-site free fringe parking area for overflow parking was unrealistic. Graphic presentations submitted to the record showed that the fringe lot was outside of a ten block radius. It was argued that the likelihood of that fringe area being used was negligible. Several opponents testified that:

- a. No on-street parking was readily available for the neighborhood residents;
- b. The applicant's present activities already generate excess parking problems;
- c. The clientele of the applicant use the public alley for parking.

The opposition further testified that the play area is adjacent to residential dwellings. The residential area is separated from the play area only by the public alley. There is no screening or landscaping to alleviate sounds or to ensure parking.

31. The Board is required by statute to give great weight to the issues and concerns of the ANC when such is reduced to writing through a recommendation. In addressing those issues and concerns, as well as those of the other opposition, the Board finds that it concurs with those issues such as traffic hazards, lack of parking, disruption to the community fabric, and number of students. The Board finds that such issues already constitute objectionable conditions that create adverse impacts on the use of neighboring properties. The Board notes that the ANC applied the wrong parking standard to the application. The current standard is one space for every four teachers and other employees. With a staff of eight, only two spaces are required. However, the ANC's concerns about the adequacy of all of the spaces used for parking are valid. Such spaces

do not meet the requirements of the Regulations. As to the existence of another child development center within 1000 feet, the Board concurs with the Office of Planning that the effect of the concentration of facilities would not be significant. As to the nature of some of the opponents that the use is a business, the Board finds that the Regulations permit a child development center as a special exception subject to certain specified considerations. Whether the use is a business is not one of those considerations. The Board finds that the weight of the evidence suggests that the center would be objectionable.

CONCLUSIONS OF LAW AND OPINIONS:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires proof that the applicant has complied with the requirements of Sub-section 8207.2 and Paragraph 3101.41. The Board concludes that the applicant has failed to meet its burden of proof. The subject facility, as presently operating, has proven objectionable to the neighboring residents in regard to noise and traffic conditions. The Board further concludes that the continuing operation of the subject use will increasingly exacerbate the present objectionable conditions. The subject use will not be in harmony with the general purpose and intent of the Zoning Regulations and will adversely affect the use of neighboring property. The Board also concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that this application is hereby DENIED.

The Board is also not unaware that the applicant has been operating the subject school and office building to the north without a valid certificate of occupancy. The Board admonishes the applicant to desist such activity.

VOTE: 3-0 (Carrie L. Thornhill, William F. McIntosh, Charles R. Norris to deny; Walter B. Lewis not voting, having recused himself; Douglas J. Patton, not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

AUG - 8 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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